

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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**In re: BAIR HUGGER FORCED AIR  
WARMING DEVICES PRODUCTS  
LIABILITY LITIGATION**

**MDL No 15-2666 (JNE/FLN)**

**AFFIDAVIT OF J. RANDALL BENHAM**

This Document Relates to:  
All Actions

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1. My name is J. Randall Benham, and I am an attorney licensed to practice in Minnesota's state and federal courts. I am general counsel of Augustine Biomedical + Design LLC ("ABD"), and I perform a similar function for other business entities affiliated with ABD, including Augustine Temperature Management LLC and the other entities subject to Defendants' Motion to Compel. I also represent Dr. Scott Augustine, Chief Executive Officer of the various Augustine-related entities. The entities I represent shall be referred to hereafter as "Augustine."
2. The facts contained herein are within my personal knowledge (except when stated as being on information and belief) and are true and correct.
3. I offer this Affidavit in order to provide the Court with additional information regarding the common interests between Augustine and the Kennedy Hodges law firm beginning in 2009 and thereafter.
4. In 2009 and before, Augustine communicated with hospitals and clinicians in the United States and various countries in Europe regarding the risks of contamination of

the operating theater by forced-air warming, specifically by Bair Hugger. The general theme of the communications was “Blowing Air Is Risky.” They provided information about the pathogenic contamination of the internal air-flow paths of the Bair Hugger blowers, the contamination of and difficulty of cleaning the Bair Hugger hose. The communications included citations from research and comments from healthcare professionals about patient-safety risks.

5. The manufacturer of Bair Hugger (the ownership preceding 3M) filed suit against Augustine in Germany and elsewhere. My memory is imperfect at this point, but I believe there were at least two suits filed in Germany and one in Switzerland...which also involved Augustine’s sales representative.
6. Augustine’s interactions with Kennedy Hodges during this period involved exactly the same issues that we were dealing with in Europe: the evidence regarding the dangers of Bair Hugger and the causes of action that could arise from such dangers. We were aware that Kennedy Hodges had its own interest in these matters—namely the possibility of representing persons injured by Bair Hugger.
7. Beginning prior to 2009 and continuing into 2016 the manufacturer of Bair Hugger repeatedly threatened Augustine, as well as its sales representatives in the United States and abroad, with legal action if Augustine did not refrain from publicizing scientific research regarding the risks of Bair Hugger.
8. Augustine and Kennedy Hodges, therefore, shared legal and factual interests. The facts that would allow Augustine to defend itself in the European litigation, against Bair Hugger’s threats of more litigation (and potentially to bring Lanham Act or other claims against Bair Hugger in the United States) were exactly the facts that Kennedy

Hodges would use on behalf of its clients. The legal claims that Kennedy Hodges might assert on behalf of injured parties were also of interest to Augustine as it considered potential causes of action.

FURTHER AFFIANT SAYETH NOT

A handwritten signature in black ink, appearing to read "J. Benham".

J. Randall Benham